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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

GURSHARAN SINGH GREWAL et al.,

Plaintiffs and Respondents,

v.

GURU NANAK MISSION SIKH CENTER et
al.,

Defendants and Appellants.

F057339

(Super. Ct. No. S-1500-CV-261558-AEW)

O P I N I O N

APPEAL from an order of the Kern County Superior Court. Sidney P. Chapin,
Judge.

The Morrison Law Group and Brett C. Drouet in Pro. Per. and for Defendants and
Appellants.

Dake, Braun & Monje, Craig N. Braun and Richard A. Monje for Plaintiffs and
Respondents.

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The underlying case concerns the merger of two religious corporations. Guru
Nanak Mission of Bakersfield, Inc. (Guru Nanak) merged with Guru Nanak Mission Sikh

Center (Sikh Center) with Sikh Center as the surviving corporation. Plaintiffs and respondents, Gursharan Singh Grewal, Binder Dhaliwal, Sharnjit K. Dhaliwal, Surjit S. Dhaliwal, Navdeep S. Dhillon, Ajaib Singh Gill, Harsharan Singh Gill, Manjinder Gill, Rupinder Singh Jhaj, Jaswant Khokar, Nazar Singh Kooner, Satnam S. Manku, Surat Singh, and Tarminder Singh, sought to void the merger through a complaint filed against defendants and appellants, Sikh Center, Nirbhai Singh Chehal, Ranjit Singh, and Gurcharan S. Dhillon.

This appeal presents a narrow issue stemming from a discovery dispute. When respondents refused to answer interrogatories requesting the addresses and telephone numbers of the plaintiffs who had been dismissed from the lawsuit, appellants moved to compel further responses. Although the trial court denied this motion, appellants moved for an issue sanction based on respondents' refusal to provide the requested addresses and telephone numbers. Appellants also alleged that respondents misused the discovery process by fabricating critical documents. The trial court denied this motion as well and imposed monetary sanctions against appellants and their counsel, appellants Brett C. Drouet and The Morrison Law Group.

Appellants contend the trial court erred in imposing monetary sanctions. According to appellants, respondents were required to file a separate noticed motion for sanctions. Appellants further argue the trial court abused its discretion in finding that no substantial justification existed for the issue sanction motion.

As discussed below, appellants were placed on notice that they could be subjected to monetary sanctions. Moreover, appellants have not demonstrated that the trial court abused its discretion in imposing such sanctions. Accordingly, the order will be affirmed.

BACKGROUND¹

Respondents and 138 other members of Guru Nanak filed a complaint against the Sikh Center seeking to rescind the merger of Guru Nanak and the Sikh Center. The complaint alleged that these plaintiffs were statutory members of this nonprofit religious corporation and had been deprived of their right to vote on and approve any proposed merger.

Approximately two months later, respondents' counsel dismissed 138 of the original plaintiffs. The court and the parties referred to these dismissed plaintiffs as the "Concurring Members." In the first amended complaint, respondents alleged that the Concurring Members agreed that their rights as statutory members had been violated and that they supported respondents' efforts and request for relief.

Upon receiving respondents' answers to their written discovery requests, appellants moved to compel further responses. Among other things, appellants sought the addresses and telephone numbers of the 138 Concurring Members. Respondents had not provided this information because, according to respondents' counsel, these individuals were still clients and could be contacted through respondents' counsel's office. The trial court denied appellants' request for such further responses without prejudice.

After filing the motion to compel, but before it was ruled on, appellants' attorney, appellant Drouet, met with 11 of the Concurring Members. According to Drouet, these individuals stated they were not represented by an attorney and had never seen a copy of the complaint. Moreover, although listed on the Guru Nanak's membership list that was purportedly approved and voted on in 2004, certain of these Concurring Members told Drouet that they became members of Guru Nanak after that date.

¹ Appellants' requests for judicial notice are granted.

Appellants then filed a motion requesting an issue sanction establishing that Guru Nanak never had any statutory members/voting members for any purposes, including voting on a merger. Appellants acknowledge that this is the dispositive issue in the underlying case. Appellants based this motion on respondents' failure to provide the addresses and telephone numbers of the Concurring Members and on allegations that respondents had engaged in an egregious and willful misuse of the discovery process by: producing fabricated bylaws and a fabricated membership voting list; providing untruthful deposition testimony; and falsely representing that counsel represented all of the Concurring Members.

In their opposition to this motion, respondents requested monetary sanctions be imposed in the amount of \$6,073.50 pursuant to Code of Civil Procedure² section 2023.030, subdivision (a).

The trial court denied appellants' issue sanction motion and awarded monetary sanctions to respondents per their request.

DISCUSSION

1. Appellants were on notice that monetary sanctions could be imposed.

The trial court may impose a monetary sanction for either engaging in a misuse of the discovery process or unsuccessfully asserting that another has engaged in a misuse of the discovery process. (§ 2023.030, subd. (a).) In fact, if statutorily authorized, the court *must* impose a monetary sanction against a party and/or attorney who unsuccessfully makes or opposes a discovery motion, unless the court finds that the person subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (*Ibid.*; *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1423 (*New Albertsons*).)

² All further statutory references are to the Code of Civil Procedure.

Appellants contend that they did not receive adequate notice that monetary sanctions could be imposed against them. According to appellants, respondents' request for monetary sanctions contained in their opposition to the issue sanction motion was insufficient. Rather, appellants argue, respondents were required to file and serve a separate noticed motion for monetary sanctions after successfully opposing appellants' discovery motion.

Under section 2023.030, notice and an opportunity for hearing are required before the court can impose a sanction against anyone engaging in a misuse of the discovery process. Adequate notice before imposition of sanctions is mandated not only by statute but also by the due process clauses of both the state and federal Constitutions. (*O'Brien v. Cseh* (1983) 148 Cal.App.3d 957, 961.) Nevertheless, neither the statutes nor due process requires a separate noticed motion before monetary sanctions can be imposed. (Cf. *Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1435-1436.) In fact, such a blanket requirement would be contrary to one of the principal purposes of the Civil Discovery Act, i.e., to further the efficient, economical disposition of cases. (Cf. *Carlson v. Superior Court* (1961) 56 Cal.2d 431, 437.)

Appellants rely on *London v. Dri-Honing Corp.* (2004) 117 Cal.App.4th 999 (*London*) to support their position that a separate noticed motion was required. However, this reliance is misplaced. While the *London* court concluded that a party *could* request monetary sanctions in connection with a motion to compel discovery by separate motion, the court did not hold that a party was required to do so. Rather, the court stated that it was "advisable" for a party to place its request for sanctions in its motion to compel further response. (*Id.* at p. 1008.)

Here, respondents requested monetary sanctions by way of a timely opposition to appellants' discovery motion. Thus, appellants were on notice that such sanctions could

be imposed. Further, appellants had the opportunity to be heard on this issue at the hearing on their issue sanction motion.

Moreover, the statutory scheme itself provided notice to appellants. Section 2023.030, subdivision (a), states that “the court shall impose [a monetary] sanction unless it finds that the one subject to the sanction acted with substantial justification” Thus any party asserting that another has engaged in a discovery abuse is on notice that, if such motion is unsuccessful, monetary sanctions could be imposed. The Civil Discovery Act adequately notifies the parties of the type of conduct that could lead to monetary sanctions. (Cf. *Roberts v. Ford Aerospace & Communications Corp.* (1990) 224 Cal.App.3d 793, 804.)

Appellants further argue that they were denied due process because respondents did not specifically identify every person, party and attorney against whom the monetary sanction was sought. However, the act of filing the issue sanction motion put appellants on notice that they could be subject to sanctions. In other words, by instigating the discovery motion, appellants identified themselves as the parties subject to any monetary sanctions respondents might request. Thus, no due process violation occurred.

2. The court did not abuse its discretion in concluding that appellants’ issue sanction motion was brought without substantial justification.

The appellate court reviews an order imposing discovery sanctions under the abuse of discretion standard. (*New Albertsons, supra*, 168 Cal.App.4th at p. 1422.) Accordingly, the trial court’s decision will not be disturbed unless it is arbitrary, capricious or exceeds the bounds of reason. (*Ibid.*; *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1247.)

One of the sanctions a court may impose for misuse of the discovery process is an issue sanction. (§ 2023.030, subd. (b).) This sanction is an order that designated facts are deemed established in favor of the party adversely affected by the misuse of the

discovery process, or an order prohibiting the sanctioned party from supporting or opposing designated claims or defenses. (*Ibid.*; *New Albertsons, supra*, 168 Cal.App.4th at p. 1422.)

However, under the Civil Discovery Act, the court may impose an issue sanction only if a party fails to obey a court order compelling discovery. (*New Albertsons, supra*, 168 Cal.App.4th at p. 1423.) This rule provides “some assurance that such a potentially severe sanction will be reserved for those circumstances where the party’s discovery obligation is clear and the failure to comply with that obligation is clearly apparent.” (*Ibid.*)

Here, respondents did not fail to obey an order compelling discovery. Rather, appellants’ motion to compel further responses was denied. Accordingly, the court’s conclusion that appellants had no substantial basis for bringing an issue sanction motion based on respondents’ refusal to provide the Concurring Members’ addresses and telephone numbers is supported by the record. It was inappropriate for appellants to seek an issue sanction in the absence of an order compelling respondents to produce the requested information.

Appellants argue that, despite the absence of an order compelling discovery, they had substantial justification for filing the issue sanction motion based on respondents’ “egregious[] misconduct committed in connection with a misuse of discovery.” There is some authority for appellants’ position. A handful of cases have held that nonmonetary sanctions for misuse of the discovery process may be imposed in certain circumstances not involving the sanctioned party’s failure to obey an order compelling discovery. (*New Albertsons, supra*, 168 Cal.App.4th at p. 1424.) However, those cases involved situations where the court determined that obtaining the prior order would have been futile. For example, the imposition of nonmonetary sanctions without a prior order was upheld where: the sanctioned party agreed by promise or stipulation to produce the requested

discovery (*Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27; *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262); the sanctioned party falsely claimed that the requested documents were nonexistent or missing or that all relevant documents had already been produced (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525; *Pate v. Channel Lumber Co.* (1997) 51 Cal.App.4th 1447); and the sanctioned party intentionally destroyed the evidence (*Williams v. Russ* (2008) 167 Cal.App.4th 1215).

In contrast here, obtaining an order compelling respondents to produce the addresses and telephone numbers would not have been futile. Respondents neither agreed to provide the information nor claimed that it did not exist. Rather, appellants had attempted to obtain such an order but had not convinced the trial court that it was warranted. The trial court denied appellants' motion to compel without prejudice to appellants seeking such information again when they possessed evidence showing the relevance and materiality of such a broad and extensive disclosure.

Appellants further argue that they had substantial justification for bringing the issue sanction motion based on allegations that respondents fabricated bylaws and a membership list. According to appellants, respondents also testified untruthfully and provided untruthful verified responses to discovery. However, discovery sanctions are imposed in connection with the failure to produce evidence. (*Williams v. Russ, supra*, 167 Cal.App.4th at p. 1223.) Whether respondents have fabricated documents and testified untruthfully are questions of fact to be determined at trial.

In sum, respondents did not fail to obey an order compelling discovery and it would not have been futile for appellants to obtain such an order. Therefore, an issue sanction motion was inappropriate. Accordingly, the trial court did not abuse its discretion in finding that appellants brought their issue sanction motion without

substantial justification. Consequently, monetary sanctions against appellants were properly imposed. (§ 2023.030, subd. (a).)

DISPOSITION

The order is affirmed. Costs on appeal are awarded to respondents.

Levy, J.

WE CONCUR:

Wiseman, Acting P.J.

Kane, J.